

January 8, 2013

WISCONSIN SUPREME COURT

TABLE OF PENDING CASES

Clerk of Supreme Court
Telephone: (608) 266-1880
Facsimile: (608) 267-0640
Web Site: www.wicourts.gov
Wisconsin Supreme Court Case Access: <http://wscca.wicourts.gov>

The following table describes pending cases the Supreme Court has accepted on petition for review, bypass, certification and original jurisdiction.

The cases included for the first time (that is, the most recently accepted cases) are marked with an * next to the case number. After the Supreme Court decides a case, the date of oral argument or date of submission on briefs is replaced with the date of the Supreme Court decision and abbreviated mandate. That mandate will generally be listed in the table for two months and then the case will be removed from the table.

The information in the table, from left to right, is as follows:

- the case number;
- an abbreviated caption of the case (case name);
- a statement of the issue(s);
- the date the Supreme Court accepted the case;
- the method by which the case came to the Supreme Court: REVW = Petition for review, CERT = Certification, CERQ = Certified Question, BYPA = Petition to bypass, ORIG = Original Action, WRIT = Petition for supervisory writ, REMD = Remanded from the U.S. Supreme Court;
- the date of oral argument or submission on briefs; or the date of the Supreme Court decision and an abbreviated mandate;
- the Court of Appeals district from which the case came, if applicable; the county;
- the date of the Court of Appeals decision, if applicable;
- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.

The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

The following table covers cases accepted and decisions issued through **January 8, 2013**. Please direct any comments regarding this table to the Clerk of Supreme Court, P.O. Box 1688, Madison, WI 53701-1688, telephone (608)266-1880.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2007AP221 & 2007AP1440	<u>Bostco LLC v. Milwaukee Metropolitan Sewerage District</u> Whether the plain language of Wis. Stat. §§ 893.80(3) and (5) restricts the judiciary's equitable power to award injunctive relief. Whether the statute's damage cap limits damages recoverable on a continuing nuisance claim of an ongoing interference with use and enjoyment of property that is abatable. Whether the statute's damage cap violates the equal protection clause of the state constitution on its face or as applied. Whether the government's taking ground water contained within a claimant's land without just compensation gives rise to an inverse condemnation claim and, if so, what would be the proper measure of damages. Because the District maintains and operates the Deep Tunnel pursuant to a DNR permit, is the District deprived of immunity under Wis. Stat. § 893.80(4) for its discretionary design decision to line only certain portions of the Deep Tunnel with concrete? Did the plaintiffs comply with Wis. Stat. § 893.80(1)'s notice of claim requirements?	02/23/2012 REVW Oral Arg 09/06/2012	1 Milwaukee	06/29/2011 Pub 2011 WI App 76 334 Wis. 2d 620 800 N.W.2d 518
2008AP1523	<u>Rock-Koshkonong Lake District, et al. v. DNR, et al.</u> Did the DNR correctly apply Wis. Stat. § 31.02(1) when considering effects upon property interests, such as residential values, business income, and public revenue? Did the DNR exceed the scope of its authority to protect "public rights in navigable waters" under § 310.02(1), by considering the effects of the water level order on private wetlands located above the ordinary high water mark? Did the DNR exceed the scope of its authority by applying Wis. Admin. Code § NR 103 to a water level proceeding under Wis. Stat. Ch. 31?	02/23/2012 REVW Oral Arg 09/05/2012	4 Rock	08/30/2011 Pub 2011 WI App 115 336 Wis. 2d 677 803 N.W.2d 853
2009AP2916-CR	<u>State v. Gregory M. Sahs</u> Whether a defendant's appeal can be dismissed on the basis that a statement made to a probation agent in question was allegedly not in the record. Whether a defendant's statement to a probation agent was coerced under the circumstances.	11/14/2012 REVW Oral Arg 02/25/2013	1 Milwaukee	Unpub.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2010AP425	<u>State v. Trammel E. Starks</u> Whether a defendant's motion to vacate a DNA surcharge counts as a prior motion for purposes of the successive motion bar under Wis. Stat. § 974.06(4) and <u>State v. Escalona-Naranjo</u> , 185 Wis. 2d 168, 517 N.W.2d 157 (1994), addressing specifically the holdings in <u>State v. Starks</u> , No. 2010AP425, unpublished slip op. (Wis. Ct. App. June 14, 2011), <u>State v. Matamoros</u> , No. 2009AP2982, unpublished slip op. (Wis. Ct. App. Dec. 21, 2010), and <u>State v. Nickel</u> , 2010 WI App 161, 330 Wis. 2d 750, 794 N.W.2d 765. What are the pleading standards for determining whether a defendant's allegations of ineffective assistance of postconviction counsel for failing to allege ineffective assistance of trial counsel satisfy the "sufficient reason" requirement of Wis. Stat. § 974.06(4)?	08/02/2012 REVW Oral Arg 01/09/2013	1 Milwaukee	Unpub.
2010AP1366-CR	<u>State v. James G. Brereton</u> Whether the defendant's constitutional rights against unreasonable search and seizure were violated when law enforcement seized his vehicle, moved it to a private lot, obtained a warrant, and then installed a GPS tracking device, which allowed law enforcement to monitor the location of his vehicle in real time for several days? (cf. <u>State v. Sveum</u> , 2010 WI 92, 328 Wis. 2d 369, 757 N.W.2d 317 (<u>Sveum II</u>) and <u>United States v. Jones</u> , 565 U.S. ____ (2012), slip op.).	03/15/2012 REVW Oral Arg 09/06/2012	2 Walworth	09/28/2011 Pub. 2011 WI App 127 337 Wis. 2d 145 804 N.W.2d 243
2010AP1952	<u>State v. Brian K. Avery</u> Whether it is error under the circumstances to grant a new trial based upon newly discovered evidence or on grounds that the real controversy was not fully tried due to the absence of the proffered new evidence which consisted of new video enhancement and photogrammetric analysis.	02/23/2012 REVW Oral Arg 10/05/2012	1 Milwaukee	11/29/2011 Pub. 2011 WI App 148 337 Wis. 2d 560 807 N.W.2d 638

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2010AP2003-CR	<u>State v. Courtney C. Beamon</u> Is a jury instruction which describes the factual theory alleged to satisfy an element legally erroneous? In a criminal case, are the instructions given the jury the law of the case against which the sufficiency of the evidence must be measured or is the evidence to be measured against "the actual elements of the offense"? Does the harmless error rule of <u>State v. Harvey</u> , 2002 WI 93, 254 Wis. 2d 442, 647 N.W.2d 189, apply when reviewing the sufficiency of the evidence for a conviction? Was <u>State v. Wulff</u> , 207 Wis. 2d 143, 153, 557 N.W.2d 813 (1997), which held a conviction may be upheld "only if there was sufficient evidence to support guilt on the charge submitted to the jury in the instructions" overruled by <u>State v. Harvey</u> , <i>supra</i> ?	04/25/2012 REVW Oral Arg 11/05/2012 (Justice On Wheels, Green County Justice Center)	2 Racine	09/28/2011 Pub. 2011 WI App 131 336 Wis. 2d 438 804 N.W.2d 706
2010AP2313	<u>Juneau County Star-Times v. Juneau County</u> Whether legal bills are "records" or "contractor's records" subject to disclosure under the Open Records Law (Wis. Stat. §§ 19.31 et seq.). Whether the argument that the records sought were not subject to disclosure was waived. Whether the requestor had a right to receive the records based upon an attorney-client relationship. Whether the records were "produced" under a contract between the county and an insurance corporation.	02/23/2012 REVW Affirmed 01/08/2013 2013 WI 4	4 Juneau	11/29/2011 Pub. 2011 WI App 150 337 Wis. 2d 710 807 N.W.2d 655

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2010AP2597-CR	<u>State v. Dennis D. Lemoine</u> When the court concludes or assumes that a defendant's statement was involuntary and improperly admitted at trial, can the court rely upon the defendant's testimony at trial to determine harmless error, without examining whether that testimony was tainted by the erroneously admitted statement? (<u>See Harrison v. United States</u> , 392 U.S. 219 (1968) and <u>Wisconsin v. Anson</u> , 2005 WI 96, 282 Wis. 2d 629, 698 N.W.2d 776, 784). Can the court conclude that an erroneously admitted statement was harmless by analyzing the evidence, absent the error, without addressing the impact of the erroneously admitted evidence? Is a defendant's noncustodial statement involuntary if an officer makes promises, uses deceit, and does not advise the defendant of his <u>Miranda</u> rights when eliciting the statement?	01/25/2012 REVW Affirmed 01/08/2013 2013 WI 5	4 Sauk	Unpub.
2010AP2809-CR	<u>State v. Matthew A. Lonkoski</u> Does a police officer cease interrogation as required by <u>Edwards v. Arizona</u> , 451 U.S. 477 (1981), where, in response to the interrogated person's invocation of the right to counsel, the officer places the person under arrest? Does the right to invoke <u>Miranda</u> [<u>Miranda v. Arizona</u> , 384 U.S. 436 (1966)] protections when custodial interrogation is "imminent or impending" apply where interrogation is ongoing but custody is imminent?	10/17/2012 REVW Oral Arg 02/25/2013	3 Oneida	Unpub.
2010AP3034-CR	<u>State v. Kenneth M. Sobczak</u> May a temporary houseguest consent to a police search of his or her host's home and a computer located inside the home that the houseguest was explicitly permitted to use?	06/13/2012 REVW Oral Arg 12/04/2012	2 Washington	01/25/2012 Pub. 2012 WI App 6 338 Wis. 2d 410 808 N.W.2d 730
2010AP3153	<u>Lynn Bethke v. Auto-Owners Insurance Company</u> Does the definition of underinsured motor vehicle in the insurer's policy function as an impermissible reducing clause when applied to the facts of this case, rendering the insurer's refusal to tender the underinsured motorist coverage to the policy holders a violation of Wisconsin Stat. § 632.32(4m) and (5)(i)? Was Auto-Owners' refusal to tender the underinsured motorist policy proceeds to the policy holders based on its policy definition of underinsured motor vehicle contrary to public policy?	06/13/2012 REVW Oral Arg 10/09/2012	2 Sheboygan	Unpub.

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2010AP3158	<u>Park Bank v. Roger E. Westburg</u> Is a corporate shareholder and guarantor barred from asserting a personal claim for damages for breach of contract and fiduciary duties against a lender, if the corporation also sustained injury as a result of the same alleged wrongful conduct of the lender? Does a default foreclosure judgment in favor of a lender in a prior lawsuit solely between the lender and a limited liability corporation borrower preclude member-guarantors from personally asserting affirmative defenses and counterclaims in a separate lawsuit brought by the lender against the guarantors on their separate guaranty contracts? Does the filing of a Wisconsin Chapter 128 receivership proceeding by a corporation preclude shareholder-guarantors from asserting affirmative defenses and counterclaims in a subsequent lawsuit brought by one of the corporate entities' lenders against the shareholder-guarantors on their personal guaranties of the corporation? Can a plaintiff rely upon unpled allegations of loan defaults in a Motion for Summary Judgment and Motion in Limine, without amending its Complaint, and over repeated objections, Motion in Limine, and Motion to Strike made by defendants?	09/14/2012 REVW Oral Arg 01/10/2013	2 Walworth	Unpub.
2011AP203	<u>Xcel Energy Services, Inc. v. LIRC</u> Whether the circuit court lacked competency due to counsel for Xcel and ACE American Insurance Co. (ACE) failing to name ACE a party to the case. Did the court of appeals properly grant itself authority to review the circuit court's denial of the Labor and Industry Review Commission's (LIRC's) motion to dismiss when LIRC did not file a notice of appeal or cross-appeal? Should LIRC's modification of one Administrative Law Judge's (ALJ's) order be set aside because LIRC's decision was inconsistent with another ALJ's prior unappealed holding that it was premature to assess permanent total disability until respondent underwent additional treatment? Should LIRC's modification of the ALJ's order be set aside and remanded because substantial and credible evidence does not support LIRC's finding that the respondent reasonably refused medical treatment?	09/14/2012 REVW Oral Arg 01/11/2013	3 Chippewa	02/29/2012 Pub. 2012 WI App 19 339 Wis. 2d 413 810 N.W.2d 865

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2011AP394-CR	<u>State v. Demone Alexander</u> Does a criminal defendant have a constitutional right to be present when the trial court questions a sitting juror during the course of a jury trial and dismissing that juror for cause, or may that right be waived by counsel without the trial court conducting a colloquy with the defendant?	11/14/2012 REVW	1 Milwaukee	Unpub.
2011AP407/408/409-CR	<u>State v. Brent T. Novy</u> Was it error to allow fingerprint evidence to be admitted in the state's rebuttal after the court had previously ruled the evidence was not admissible because the state violated the discovery statute by not providing it to the defense? Was defendant-appellant-petitioner deprived of the right to an impartial jury and fair trial when defense counsel observed a juror sleeping during his closing argument?	06/13/2012 REVW Oral Arg 10/09/2012	2 Kenosha	01/25/2012 Pub. 2012 WI App 10 338 Wis. 2d 439 809 N.W.2d 889
2011AP414	<u>Cindy Horak v. Building Services Industrial Sales Company</u> What is the appropriate legal standard for ascertaining whether documents (in this case invoices) should be admitted under the ancient documents exception to the hearsay rule (Wis. Stat. § 908.03(16)? If the appellate court deems that records are subject to the ancient documents exception, should the court remand the matter for further fact finding on these issues or should it summarily conclude that the documents are admissible at trial?	09/14/2012 REVW	1 Milwaukee	05/31/2012 Pub. 2012 WI App 54 341 Wis. 2d 403 815 N.W.2d 400
2011AP450-CR	<u>State v. Julius C. Burton</u> Since the defendant had the right to a jury trial to determine whether he was not responsible for the crimes by reason of mental disease or defect, even if he had pled guilty to the crimes, and since defense counsel had not indicated at the plea hearing that he had been made aware of that right and intended to waive it, was the defendant denied effective assistance of counsel and was he entitled to have his guilty pleas withdrawn? Since the circuit court failed to advise the defendant that he had a right to plead guilty to the crimes charged and still have a jury trial to determine whether he was not responsible for the crimes by reason of mental disease or defect, had the defendant's pleas of guilty not been knowingly, voluntarily and intelligently made and, therefore, was the defendant entitled to have his guilty pleas withdrawn?	09/27/2012 REVW Oral Arg 01/11/2013	1 Milwaukee	Unpub.

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2011AP557	<u>Dale P. Veto v. American Family Mutual Ins. Co.</u> Whether language in an insurer's personal liability umbrella policy that "uninsured . . . motorists coverage under this policy will be no broader than the underlying insurance," unambiguously incorporates an uninsured motorist reducing clause from the underlying family car policy.	09/14/2012 REVW	4 Dane	05/31/2012 Pub. 2012 WI App 56 341 Wis. 2d 390 815 N.W.2d 713
2011AP564	<u>Marshall Schinner v. Michael Gundrum, et al.</u> Is the act of giving alcoholic beverages to underage persons at a party leading to an injury to a person at the party an "occurrence" or "accident" as that term is used in a homeowner's liability insurance policy? Does the act of hosting a party in a secluded shed on separate business property have some connection with that real property where it happened so as to constitute a "claim arising out" of a business location that was not the insured home? Does the storage of some personal property on undisputedly business property that is not listed or defined as an insured location on a homeowner's insurance liability policy convert the business location to an insured location under the homeowner's insurance liability policy?	06/13/2012 REVW Oral Arg 10/23/2012	2 Washington	03/28/2012 Pub. 2012 WI App 31 340 Wis. 2d 195 811 N.W.2d 431
2011AP583	<u>Marilyn M. Brown v. Acuity, A Mutual Insurance Company</u> Is a volunteer firefighter's decision, while responding to an emergency call in his personal vehicle, to drive through a red light without sounding an audible signal a discretionary decision entitled to governmental immunity? Is a volunteer firefighter acting within the scope of his employment for purposes of governmental immunity while driving in his personal vehicle from his home to the fire station in response to an emergency call?	10/17/2012 REVW Oral Arg 02/12/2013	2 Waukesha	06/27/2012 Pub. 2012 WI App 66 342 Wis. 2d 236 815 N.W.2d 719

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2011AP593	<p><u>Angelia Jamerson v. Department of Children & Families</u></p> <p>Does a conviction of a public benefits offense pursuant to Wis. Stat. § 49.12(1) and (6) (1989-90) constitute as a matter of law “[a]n offense involving fraudulent activity as a participant” in certain public benefits programs for purposes of the Wis. Stat. § 48.685(5)(br)5. Bar to childcare licensure?</p> <p>What level of deference should be applied to the Department of Children and Families’ determination that a conviction for public benefits fraud contrary to Wis. Stat. § 49.12(1) and (6) (1989-90) constitutes as a matter of law “[a]n offense involving fraudulent activity as a participant” in certain public benefits programs for purposes of the Wis. Stat. § 48.685(5)(br)5. bar to child care licensure?</p> <p>Did a Division of Hearings and Appeals administrative law judge properly grant the motion to dismiss filed by the Department of Children and Families in a child care provider’s chapter 227 child care license revocation appeal without first conducting a contested case hearing?</p>	<p>06/13/2012 REVW Oral Arg 10/09/2012</p>	<p>1 Milwaukee</p>	<p>03/28/2012 Pub. 2012 WI App 32, 340 Wis. 2d 215, 813 N.W.2d 221</p>
2011AP685-CR	<p><u>State v. Lamont L. Travis</u></p> <p>Whether a sentencing court’s reliance on inaccurate information at sentencing, with the inaccuracy consisting of a mistaken belief that the sentence required a minimum period of five years of confinement, qualifies as a structural error requiring automatic reversal and therefore precludes the State from proving harmless error (cf., <u>State v. Tiepelman</u>, 2006 WI 66, 291 Wis. 2d 179, 717 N.W.2d 1).</p> <p>Whether, if classifying the error as structural, the remedy of resentencing complies with mandatory precedent requiring complete reversal of a structurally infected prosecution.</p> <p>Whether, assuming harmless-error analysis applies to this error, the supreme court should decide the harmless-error issue or should remand the issue to the court of appeals to decide.</p>	<p>09/14/2012 REVW Oral Arg 01/10/2013</p>	<p>2 Kenosha</p>	<p>04/25/2012 Pub. 2012 WI App 46 340 Wis. 2d 639 813 N.W.2d 702</p>

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2011AP691-CR	<u>State v. Matthew R. Steffes</u> Whether the elements of the theft by fraud statute, Wis. Stat. § 943.20 (1), require a false promise or representation of payment that induces the victim to provide or relinquish some tangible property to the defendant. Whether electricity used to power a telephone network can be considered tangible property under the theft by fraud statute. Whether the court correctly valued the stolen applied electricity by the value of the telephone services used by the criminal conspiracy and not paid for.	10/16/2012 REVW Oral Arg 02/12/2013	1 Milwaukee	04/25/2012 Pub. 2012 WI App 47 340 Wis. 2d 576 812 N.W.2d 529

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2011AP788	<u>Christopher T. Beidel v. Sideline Software, Inc.</u> Had the employee been terminated within the meaning of section 6 of the Stock Repurchase Agreement? Was the employee required to prove a constructive termination under the essential elements set out in <u>Strozinsky v. School Dist. of Brown Deer</u> , 2000 WI 97, ¶83, 237 Wis. 2d 19, 614 N.W.2d 443, in order to put his shares to Sideline Software, Inc. for the stipulated price? Does the implied covenant of good faith and fair dealing require a court to “assess competing equities” between the parties in making a determination whether an unambiguous provision of a contract has been breached? When a breach of contract lawsuit has been pled as an equitable action for specific performance, does a trial court have greater latitude in reaching a conclusion that the contract has been breached by the defendant than if the lawsuit has been pled as one for money damages? Whether the concept of “constructive discharge” as used in the context of wrongful termination claims has any applicability to the claims asserted by plaintiff-appellant in this case. If “constructive discharge” as that term is used in wrongful termination claims is at issue in this case, whether the concept should be modified in situations where the employer is claiming that the employee remained employed (as opposed to situations where the employer is claiming that the employee voluntarily resigned his or her employment), including whether the requirement of the resignation of employment is appropriate in such situations. If the concept of “constructive discharge” as used in wrongful termination claims either is not at issue in this case and should not be modified, whether a new concept should be adopted to address situations where a plaintiff employee asserts that his/her employment was effectively terminated while the employer asserts that the employee’s employment continued, as has occurred in this case.	09/14/2012 REVW Oral Arg 01/09/2013	1 Milwaukee	03/28/2012 Pub. 2012 WI App 36 340 Wis. 2d 433 811 N.W.2d 856
2011AP813-CR & 2011AP814	<u>State v. Juan J. Gracia</u> <u>City of Menasha v. Juan J. Gracia</u> Was the warrantless police entry into Juan Gracia’s bedroom lawful under the community caretaker doctrine and did the trial court properly deny Gracia’s motion challenging his prior conviction on the grounds that he had not validly waived his right to counsel?	05/14/2012 REVW Oral Arg 10/23/2012	2 Winnebago	Unpub.

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2011AP825 & 2011 AP826	<u>Dane County Dept. of Human Services v. Mable K.</u> When a trial court grants partial relief on remand in a termination of parental rights (TPR) appeal, is further appeal precluded by the ordinary rules of civil procedure? Where the trial court determines that it denied the right to counsel during a TPR trial, must the court grant an entirely new hearing before a different judge or may the court remedy the violation by returning the parent to that point of the proceedings where the deprivation occurred and permitting the parent's counsel to present evidence for determination as to whether to order default? Did the trial court misuse its discretion when it did not vacate a 10 minute-old default judgment when the cognitively challenged parent arrived in court?	05/03/2012 REVW Oral Arg 09/07/2012	4 Dane	Unpub.
2011AP902	<u>Isaac Sawyer v. West Bend Mutual Insurance Company</u> Is a one-page faxed advertisement sent by one business to another in violation of the Telephone Consumer Protection Act (TCPA) considered a publication of material violating a person's right to privacy thereby entitling the violator to liability coverage under the specifically defined personal and advertising injury insurance coverage? Does the Knowing Violation of Rights of Another exclusion clause exclude coverage under the personal and advertising injury coverage for the sending of a one page facsimile advertisement that is in violation of the TCPA?	11/14/2012 REVW	1 Milwaukee	08/29/2012 Pub. 2012 WI App 92 343 Wis. 2d 714 821 N.W.2d 250
2011AP914	<u>Estate of Danny L. Hopgood v. Jimmy D. Boyd</u> Whether the plaintiffs properly "swore to" the contents of their notices of claim, thereby strictly complying with Wis. Stat. § 893.82 and the requirements of <u>Kellner v. Christian</u> , 197 Wis. 2d 183, 539 N.W.2d 685 (1995).	06/13/2012 REVW Reversed and remanded 01/03/2013 2013 WI 1	4 Dane	Unpub.
2011AP1030-CR	<u>State v. Gerald D. Taylor</u> Whether the trial court properly employed the harmless error doctrine to deny the defendant's plea withdrawal motion without a hearing where the court had misinformed the defendant about the maximum sentence he faced with a repeater allegation. (See <u>State v. Bangert</u> , 131 Wis.2d 246, 389 N.W.2d 12 (1986)). Whether there is a conflict between the holdings in <u>State v. Brown</u> , 2006 WI 100, 293 Wis. 2d 594, 716 N.W.2d 906 and <u>State v. Cross</u> , 2010 WI 70, 326 Wis. 2d 492 786 N.W.2d 64 requiring resolution by the court.	03/15/2012 CERT Oral Arg 09/06/2012	3 Outagamie	--

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2011AP1044-CR / 2011AP1105-CR	<u>State v. Dale R. Neumann</u> <u>State v. Leilani F. Neumann</u> What is the scope of the prayer treatment exception under Wis. Stat. § 948.03(6) where defendants are charged with second-degree reckless homicide under Wis. Stat. § 940.06 (1) and what are the appropriate jury instructions when that exception is raised in a reckless homicide case?	06/13/2012 CERT Oral Arg 12/04/2012	3 Marathon	--
2011AP1113	<u>Prent Corporation v. LIRC</u> Whether an employer had a reasonable basis for not paying the original bad faith award for failing to rehire an employee. Whether there was sufficient evidence to support a bad faith award. (<u>See</u> Wis. Stat. § 102.35). Whether the Labor & Industry Review Commission acted in excess of its powers when it concluded that the employer's offset of \$5,857 in temporary disability wage payments it made to the employee from the award of maximum damages permitted for unreasonable refusal to rehire pursuant to Wis. Stat. s. 102.35 (3) constituted bad faith pursuant to Wis. Stat. s. 102.18(1)(bp), thereby permitting an additional \$30,000 penalty against the employer.	10/16/2012 REVW Voluntary Dismissal Granted 12/11/2012	4 Rock	Unpub.
*2011AP1121	<u>Paul Davis Restoration of S.E. Wisconsin, Inc. v. Paul Davis Restoration of Northeast Wisconsin</u> Whether a judgment entered against only a business entity's trade name is enforceable against the trade name and the underlying entity (<u>See Jacob v. West Bend Mutual Insurance Co.</u> , 203 Wis. 2d 524, 553 N.W.2d 800 (Ct. App. 1996)). Whether a judgment against an entity's trade name in a principal action can be collaterally attacked in a subsequent garnishment action.	12/10/2012 REVW	3 Brown	Unpub.
2011AP1158	<u>Showers Appraisals, LLC v. Musson Bros., Inc.</u> Is a private governmental contractor entitled to sovereign immunity under <u>Estate of Lyons v. CAN Insurance Company</u> , 207 Wis. 2d 446, 558 N.W.2d 658 (Ct. App. 1996) for its efforts to maintain water drainage on a construction site so as to protect an adjacent private property from water damage?	11/14/2012 REVW	2 Winnebago	07/27/2012 Pub. 2012 WI App 80 343 Wis. 2d 623 819 N.W.2d 316
2011AP1176/ 2011AP1177	<u>Joseph McLeod v. Patricia Mudlaff, et al.</u> Does a court have the authority to entertain an action to declare a marriage void after one of the spouses has died?	10/17/2012 CERT Oral Arg 02/12/2013	2 Washington	--

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2011AP1240	<u>Patricia A. Johnson v. Michael R. Masters</u> Is it an "action" barred by the statute of repose, Wis. Stat. § 893.40, when a wife seeks to obtain a pension award by submitting a qualified domestic relations order (QDRO) as required by the divorce judgment, and the submission is approximately one year after the former husband retires, but more than twenty years after the divorce judgment?	05/14/2012 CERT Oral Arg 09/07/2012	2 Waukesha	--
*2011AP1566	<u>United Concrete & Construction, Inc. v. Red-D-Mix Concrete, Inc.</u> Whether the determination that statements made by a seller a puffery is a question of fact or law. Whether the appellate discussion of assigned claims of homeowners/customers circumvents the holding in <u>Linden v. Cascade Stone Co.</u> , 2005 WI 113, 283 Wis. 2d 606, 639 N.W.2d 189.	12/10/2012 REVW	3 Outagamie	Unpub.
2011AP1770-CR/ 2011AP1771-CR	<u>State v. Brandon M. Melton</u> Whether a circuit court has inherent authority to destroy an extra presentence investigation (PSI) report after entry of judgment for purposes not related to the original sentencing proceeding.	11/14/2012 REVW	2 Waukesha	08/29/2012 Pub. 2012 WI App 95 343 Wis. 2d 784 820 N.W.2d 487

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2011AP2067	<p><u>Mary E. Marlowe v. IDS Property Casualty Ins. Co.</u></p> <p>Because there is no statutory authority specifying discovery in arbitration (outside of depositions under § 788.07), after <u>Borst v. Allstate Ins. Co.</u>, 2006 WI 70, 291 Wis. 2d 361, 717 N.W.2d 42, do arbitrators have the inherent authority to determine the necessity and scope of allowable discovery in the absence of an express agreement by the parties?</p> <p>In light of <u>Borst</u>, does an arbitration panel have exclusive authority to interpret an arbitration agreement to determine discovery procedures that apply to an arbitration absent an express agreement by the parties?</p> <p>When arbitration is an alternative to litigation and formal court proceedings, should an arbitration panel, absent an explicit clause in an arbitration contract, order the parties to participate in formal discovery proceedings that would generally only be available to litigants in the circuit court process?</p> <p>After <u>Borst</u>, in the absence of an express agreement by the parties as to the scope of discovery, does a party have a right to request declaratory relief from the trial court on the interpretation of an arbitration clause in an automobile insurance policy?</p> <p>If the court determines that the plaintiffs were seeking an intermediate review of an arbitration panel decision, can intermediate rulings by an arbitration panel be challenged in the circuit court before a final award is made on the grounds that an arbitration panel did not have authority to act in the first place?</p>	<p>06/13/2012 REVW Oral Arg 10/04/2012</p>	<p>3 Brown</p>	<p>04/25/2012 Pub. 2012 WI App 51 340 Wis. 2d 594 811 N.W.2d 894</p>
2011AP2166	<p><u>David J. Rosecky v. Monica M. Schissel</u></p> <p>Is the surrogacy parentage agreement valid and enforceable?</p> <p>Is any portion of the surrogacy parentage agreement, in the event found void and unenforceable by the court, severable from the remaining terms of the agreement?</p> <p>Is it in the child's best interest to have no placement with the biological mother?</p> <p>Was the trial court's decision granting placement rights to the biological mother based on the evidence presented or was it arbitrary, constituting an abuse of discretion?</p>	<p>09/27/2012 CERT Oral Arg 01/09/2013</p>	<p>4 Columbia</p>	<p>--</p>

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2011AP2864-CRAC	<u>State v. Samuel Curtis Johnson, III</u> Do defendants have a constitutional right to disclosure of privately-held privileged medical records? If so, what is the basis for the constitutional right? How should the constitutional right be defined and what are its parameters? If defendants have a constitutional right to disclosure of privately-held privileged records, does the constitutional right trump privilege statutes? May a circuit court protect the constitutional right by ordering privately-held privileged records for in camera review and then reviewing records in camera to determine what, if any, should be disclosed to the defendant? If defendants have a constitutional right to disclosure of privately-held privileged records, did the defendant establish a constitutional right to disclosure of the alleged victim's privately-held privileged therapy records? (See <u>State v. Green</u> , 2002 WI 68, 253 Wis. 2d 356, 646 N.W.2d 298, discussing <u>State v. Shiffra</u> , 175 Wis. 2d 600, 499 N.W.2d 719 (Ct. App. 1993)).	11/14/2012 REVW Oral Arg 02/25/2013	2 Racine	Unpub.
2011AP2888	<u>Village of Elm Grove v. Richard K. Brefka</u> Does a court have competence to hold a refusal hearing if the defendant does not meet the Wis. Stat. § 343.305 pre-condition of requesting a hearing within ten days?	11/14/2012 REVW	2 Waukesha	Unpub.
2012AP99	<u>Outagamie County v. Melanie L.</u> Did the county fail to prove that an individual was incompetent to refuse medication and treatment for psychiatric disorders within the meaning of Wis. Stat. § 51.61 (1) (g) 4.b. where evidence tended to show that the individual recognized the need for medication and treatment for mental illness?	11/14/2012 REVW Oral Arg 02/26/2013	3 Outagamie	Unpub.
2012AP544-W	<u>Office of the State Public Defender v. Court of Appeals, District IV</u> Is defense postconviction counsel in a merit appeal required to first seek circuit court permission to "access, cite to, and quote from a PSI [presentence investigation] report" before litigating a PSI-related sentencing issue? Does the decision in <u>State v. Parent</u> , 2006 WI 132, 298 Wis. 2d 63, 725 N.W.2d 915, which related to a no-merit appeal, also require such circuit court permission in a merit appeal?	06/13/2012 WRIT Oral Arg 11/05/2012 (Justice On Wheels, Green County Justice Center)	4 Wood	--

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2012AP665	<u>Manitowoc County v. Samuel J. H.</u> Whether Wis. Stat. § 51.35 (1) (e) mandates a hearing within ten days for all transferred patients, including those transferred for medical reasons, under § 51.35 (1) (e)1., or whether the mandate applies only to those patients transferred due to a violation of conditions of outpatient placement as set forth in § 51.35 (1) (e)2. – 5. (See <u>Fond du Lac County v. Elizabeth M.P.</u> , 2003 WI App 232, ¶¶26, 28, 267 Wis. 2d 739, 672 N.W.2d 88).	11/14/2012 CERT Oral Arg 02/26/2013	2 Manitowoc	--

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